

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION APPEAL (L) NO.41571 OF 2025

Central Depository Services (India) Ltd. .. Appellant

vs.

Daksha Narendra Bhavsar & Anr. .. Respondents

Mr.Ravi Kadam, Senior Advocate a/w Mr.Pranav Badheka, Senior Advocate, Mr.Rohan Kadam, Mr.Vaibhav Singh, Ms. Radhika Indapurkar, Mr.Rahil Shah, Mr.Manas Kotak, Mr.Pranav Chandhoke i/b Veritas Legal for the Appellant.

Mr.Karl Tamboly a/w Mr.Harsh Moorjani, Ms.Priyanka Chaddha, Mr.Abhay Dhadiwal, Ms.Vidhi Karia i/b Jayakar and Partners for the Respondent No.1.

**CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ**

**RESERVED ON : 23rd APRIL 2026
PRONOUNCED ON: 2nd JULY, 2026**

JUDGMENT (PER BHARATI DANGRE, J) :

1 Central Depository Services Limited (CDSL), a Company established under the provisions of the Companies Act, 1956 and a Depository under Section 12(1-A) of the Securities and Exchange Board of India Act, 1992 (SEBI Act) and facilitator for holding securities in a dematerialized form, has preferred the present Appeal being aggrieved by the Judgment of the learned Single Judge dated 01/12/2025.

CDSL approached this Court by filing a Petition under Section 34 of the Arbitration and Conciliation Act, 1996, seeking invalidation of the Award dated 30/01/2024 passed by the Arbitral Tribunal, under which Tribunal allowed the claim filed by the claimant Daksha Bhavsar, respondent no.1 before us to the extent of Rs.86,02,768/- and directed it to pay the awarded sum, being the value of her lost shares on the date of the dispute. In addition, the Tribunal also awarded simple interest at the rate of 9% p.a. on the awarded sum.

2 The background reveal that Daksha Bhasar had filed a statement of claim before the Arbitral Tribunal against CDSL and BRH Wealth Kreators (West Bengal) and the Arbitral Tribunal comprising of three Arbitrators granted the claim and upon a challenge being raised to the Award, the learned Single Judge by the impugned Judgment reached to a conclusion that the view of the Arbitral Tribunal was a plausible view taken after considering the facts and circumstances of the case by holding the Petitioner responsible for indemnifying Respondent No.1 for lost shares and since the impugned Award did not suffer from perversity or patent illegality apart from the fact that Award was supported by reasons, the Arbitration Petition was dismissed.

The learned Single Judge also recorded that the case involved a unique and possible unprecedented fraud where broker and Depository Participant had stolen shares of the clients entrusted to it and had indirectly caused sale of the same by

creating pledge with HDFC Bank and the Arbitral Tribunal considered the composite role of BRH in the transaction, as BRH had also acted as Depository Participant in causing transfer of the shares and creating pledge and since the client had been made to suffer a loss, the findings recorded by the Tribunal were found to be reasonable and purely attributable to it, warranting no interference.

It is this Judgment, which is questioned before us.

3 We have heard the learned senior counsel Mr.Ravi Kadam for the Appellant and Mr.Karl Tamboly, who has marked appearance on behalf of the Respondent no.1.

4 By consent of the respective counsel, we have taken up the Appeal for final hearing.

Before we appreciate the rival contentions, it would be appropriate for us to make a reference to the nature of transaction involved in the proceedings.

CDSL is one of the two Depositories in India and a Facilitator for holding securities in dematerialized form, in addition to the National Securities Depository Limited (NSDL). It is registered with SEBI as a Depository under Section 12(1-A) of the SEBI Act.

In the Scheme of the securities market, wherein, in order to facilitate the shares to be held in electronic form and not paper form, and with the introduction of concept of 'dematerialization', the Depositories were introduced to hold the securities in a De-

mat Account for the owner of such Securities and are cast the onus to transfer the Securities in a paperless manner.

The Petitioner is regulated by SEBI and governed by the provisions of the Depositories Act, 1996 as well as the SEBI (Depositories and Participants) Regulations, 2018 as well as various circulars, notifications issued by SEBI from time to time.

5 The Securities Market in India has involvement of three kind of market participants each playing separate and distinct role and relegated by three separate market infrastructure institutions. At the top of the pyramid lies the Depository Participants who execute instructions received from clients /clients Power of Attorney Holder and who are registered with and regulated by Depositories Act, 1996 i.e. CDSL or NSDL.

In addition, there are stock brokers who execute the orders resulting in trade received from trading account holders, who are registered with and regulated by stock exchanges like the National Stock Exchange (NSE) or Bombay Stock Exchange (BSE). There are also Clearing Members' who clear trades on its own behalf or on behalf of other stock brokers and who are registered with and regulated by Clearing Corporation like NSE.

The Petitioner function as a central accountant and record keeping office in respect of Securities in dematerialized form. Any company which wants to issue any Securities in dematerialized form or provide the option to the holder of its securities to hold it in dematerialized form, is required to admit its securities into the system of the Petitioner or the other

Depository Participant i.e. NSDL, by establishing electronic connectivity with such Depository either directly or through Registrar and Transfer Agent and both listed and unlisted Securities can be admitted into the system.

The Petitioner operates through various agents referred to as 'Depository Participants' who act as intermediaries between the Petitioner and the beneficial holders of the Securities. In order to hold a Security in a dematerialized form with the Petitioner, a beneficial owner of the Security is required to open Dematerialised Account (a Demat Account) which is a digital repository used to securely hold security bonds, mutual funds and other securities in electronic format. It eliminated the need for physical Share Certificate and enables the holder to trade in stock market. As an agent of the Petitioner, the Depository Participant facilitates the dematerialization of Securities and offer services connected with the maintenance of the ownership records and transfer of ownership of Securities in the records of the Depository.

The Petitioner exercises monitoring power over the functions which a Depository Participant perform as its agent.

6 The rights and obligations between the Petitioner and its Depository Participants are governed by a) Bye-laws of the Petitioner; b) an Agreement entered into between the Petitioner and each of its Depository Participant, c) the operating instructions issued by the Petitioner to its Depository Participant and (d) the communication issued by the Petitioner to its Depository Participant.

Several entities which are registered as Depository Participants are also members of the Stock Exchanges and act as stock broker, who execute the orders resulting in trades.

While Depository Participant act as an Agent of the Petitioner, a Stock Broker is member of the Stock Exchange who has trading rights on such Stock Exchange and execute trade on the platform of the Exchange, either on his own behalf or on behalf of its client and such trades are cleared and settled through Clearing Member which the Stock Brokers chooses. A Clearing Member has to ensure that the Securities and Funds are credited to the relevant accounts within a specific time period post the sale/ purchase of Securities on the Stock Exchange.

It is in this background, and with the introduction of the three elements operating in the Stock Market in India, we have to appreciate the dispute that was taken for Arbitration before we appreciate the submissions advanced.

7 The Respondent-Daksha Bhavsar opened a Demat Account with BRH Wealth Kreators Ltd, respondent no.2 (Stock Broker) on 27/06/2018 and on 29/06/2018 she alongwith her late husband jointly executed a Power of Attorney (PoA) in favour of the Stock Broker. On 31/07/2019 and 23/08/2019, the Stock Broker BRH Wealth Kreators transferred the equity shares from Bhavsar's Demat Account (BOID1204630001867255 Bo-Sub Status Individual-Resident) to its Corporate Trading Member (TM)/Clearing Member (CM) Client Account. This transfer was carried out pursuant to the authority conferred under the PoA

and by virtue of the said transfer the title in Bhavsar's securities was transferred to the TM/CM account of the Stock Broker, which was the first leg of the transaction.

Shares being fungible in nature, with its transfer from the Demat Account of Bhavsar to the Stock Broker's TM/CM account, it became the holder of the Securities and was entitled to further transfer the Securities.

Bhavsar was aware that the Securities have been transferred out of a joint Demat Account as pursuant to the first leg of transaction being completed, CDSL generated SMS alert of the transfer on her registered mobile number.

8 Once the Securities of Bhavsar went into the account of Stock Broker, who was also dealing with shares of various beneficial owners and which had reached first TM/CM account (BOID 1204630000023100), the securities were transferred to another dematerialized account of the Stock Broker, also a TM/CM client account being the Corporate Clearing Member of the trading member of Client Account (BOID 1204630000021137).

Worth it to note that upon such transfer to the second TM/CM account, the Shares/Securities lost their identity being fungible in nature and they no longer could be identified against the individual beneficial owner.

On the very same day, BRH, the Depository Participant (DP) pledged the shares of various beneficial owners including Daksha Bhavsar, which had arrived in its second TM/CM account with

HDFC Bank Limited (HDFC), a scheduled commercial bank for the purpose of availing a loan facility. It is evident that this second leg of transaction of the Stock Broker pledging shares (HDFC) was evidently for its own use.

When BRH i.e. Respondent No.2 defaulted in its loan obligations, HDFC Bank invoked the pledge and sold the pledged securities and it posed no difficulty in invoking the pledge as the pledge was created prior to the action of suspension against BRH.

In continuation of the sequence of events, it is also to be noted that on 30/09/2019 the National Stock Exchange (NSE) being the market infrastructure institute responsible for monitoring and overseeing the activities of the Stock Brokers including BRH, suspended its activities with effect from 01/10/2019 for non-compliance of regulatory provisions of the Stock Exchange.

Upon HDFC invoking the pledge, since BRH defaulted in its obligations, Daksha Bhavsar filed an Appeal before the Securities Appellate Tribunal (SAT) seeking direction against the CDSL to appoint a Conciliator/Arbitrator to settle her claim in respect of the unauthorized transfer of her shares. SEBI issued notices to HDFC alleging illegal invocation of pledge of securities and by order dated 21/01/2021, the Whole Time Member (WTM) of SEBI directed HDFC to deposit a sum of Rs.158.68 Crores alongwith interest at the rate of 7% p.a. alongwith penalty of Rs.1 Crore.

HDFC raised a challenge to the order by filing an Appeal before SAT and by order dated 18/02/2022 it was held that the

pledge created by BRH in favour of HDFC was valid and it was validly invoked by HDFC Bank and the order of WTM was set aside.

We are informed that this order passed by SAT is subject matter of Civil Appeal before the Apex Court.

9 On 11/01/2023, SEBI, by invoking powers under Section 11 of the SEBI Act, 1992, passed an order declaring that BRH had violated its duty as broker under SEBI Circular dated 18/11/2021 and 26/09/2016 by pledging the shares of its clients. As the SEBI intended to take strict action for such violation, BRH was debarred from the market for 7 years and was directed to pay the investors, under the supervision of NSE.

By order dated 06/06/2023, SAT permitted Daksha Bhavsar to initiate arbitration proceedings for redressal of her grievance and accordingly the Arbitral Tribunal comprising of three Arbitrators was constituted by CDSL.

Before the Tribunal, Daksha Bhavsar filed Statement of Claim (SoC) on 17/07/2023 and while seeking adjudication of her claims, she attributed negligence to CDSL in discharge of its duties and staked her claim that CDSL alongwith BRH were jointly and severally liable to restore her shares or make payment of the amount claimed in the SOC.

CDSL resisted the claim of Daksha Bhavsar by filing reply. However, in the meantime, SEBI examined the entire transaction and issued notice to CDSL alleging that it had violated certain provisions of SEBI (Depositors and Participants) Regulations

2018 and its own bye-laws and appointed an adjudicating officer to adjudicate the alleged violations. A show cause notice came to be issued to CDSL as to why inquiry shall not be initiated and penalty shall not be imposed against it under the Depositories Act, 1996 for the alleged violations and ultimately on 24/07/2023, SEBI reached a conclusion that CDSL has not violated the provisions of the Act or Rules/ Regulations/ Circulars and in fact held that CDSL allowed invocation of pledge for De-mat Account on which freezing orders have been passed by SEBI, provided the pledge has been created prior to the passing of freezing order and eventually the proceedings initiated by show cause notice against CDSL were dropped.

On 25/07/2023, SEBI issued a letter, wherein the Stock Exchanges and Depositories were directed to compensate the investors in the manner set out therein by holding that in case of negligence/fraud committed by Depository Participant/ Employee in its operations or in case of transfer of Securities from client account to account of broker/any other entity without corresponding trade obligations, post implementation of paying validation the depositors shall be held liable and shall compensate the investors. However, in case of unauthorized transaction by misuse of PoA by the broker or shares transferred from investors Demat Account by misuse of settlement ID, it was the Stock Exchange which was to be held liable. However, these directions applied prospectively and did not cover the past transactions.

.. The arbitration proceedings before the Arbitral Tribunal resulted into an Award dated 30/01/2024 recording that CDSL is

liable to indemnify Daksha Bhavsar for breaches committed by BRH and her claim was allowed in the sum of Rs.86,02,768/-, being value of her lost shares on the date of dispute alongwith post award interest of 9% p.a. from the date of Award till realization.

The Arbitral Tribunal probed into the role played by BRH as broker and held that BRH pledged the shares of Daksha Bhavsar without authority to HDFC Bank as security for availing loan. It was also held that a standard PoA only enable a broker to invoke the same for getting margin requirements, but BRH misused the same to pledge the shares for availing loan for itself from HDFC and thus it was concluded that PoA was used for the purpose other than fulfilling the margin requirements.

The Arbitral Tribunal also probed in to the role of BRH as Depository and held that it failed to obtain 'pledge request' from the client before pledging her securities as required under SEBI (DP Regulations) and CDSL bye-laws and this amounted to serious manipulation by BRH. Apart from this, the Arbitral Tribunal also held that it was unconceivable that unauthorized pledge could have been made without involvement of BRH as Depository Participant and in absence of client pledge request and the PoA not authorizing Depository Participant to pledge client securities, it was concluded that the pledge created by BRH was fraudulent .

By referring to the Scheme of Depositories Act as well as the SEBI Regulations, 2018, bye-laws of CDSL, the Arbitral Tribunal held that there was abject failure of Government, both

structurally and hierarchically and all attempts were made to insulate the Depositor from defaults committed by BRH as Depository Participant. Since in the whole scheme of the Depositories Act, Depository Participant exercised the role as an agent of the Depository, the Tribunal observed that the fundamental question of lack of inadequate monitoring and supervision by CDSL lead to inescapable conclusion that CDSL as a principal could not be expected to be blissfully obligated, as Securities of 9493 clients of BRH as Depository Participant were fraudulently pledged to HDFC without obtaining their consent to the pledge request, as contemplated under the Act.

Considering the role of CDSL as a regulatory body the Tribunal accused it of failing to stall BRH as Depository Participant from mis-utilizing the shares of thousands of investors and ultimately concluded that CDSL cannot shy away from its paramount duty of protecting the investors interest from malpractices and thus allowed the claim of the claimant being the value of lost shares.

This Award was subjected to challenge before the learned Single Judge under Section 34 of the Arbitration Act and by the impugned Judgment dated 01/12/2025, the Award was upheld since it was held that the finding rendered therein do not suffer from any perversity or any patent illegality and the reasoning recorded in the Award being a plausible view, no interference was shown.

10 In support of the Appeal presented before us under Section 37 of the Arbitration and Conciliation Act, 1996, the learned senior counsel Mr.Kadam has taken us through the Scheme of the Depositories Act, 1996, alongwith elements involved viz ‘The Depository’ ‘The Participant’ and ‘the Registered Owner’ alongwith the rights and obligations of the key elements under the Depositories Act, 1996.

He would also invite our attention to the manner of governance of Depositories as well as the rights and obligations of Depositories, Participants, Issuers which include a specific prohibition of assignment and obligation for maintaining separate accounts by every Participant in the name of each beneficiary owner and the segregation of the Securities, as well as the manner of creating pledge.

Our attention is also invited to the Regulations of SEBI made in exercise of power conferred under Section 30 of the SEBI Act, 1992 read with Section 25 of the Depositories Act, 1996 known as Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 (hereinafter referred to as Regulations of 2018).

According to Mr. Kadam the Depositories Act, 1996 was enacted to facilitate seamless and paperless transfer of securities held in dematerialized and fungible form and under the Scheme the beneficial owner retain all rights and liabilities in respect of the Securities. Relying upon the Scheme of the Act, Mr. Kadam has submitted that the Depository functions merely as a registered owner for the limited purpose of effecting transfer and

the Depository Participant acts only on instructions of the beneficial owner (the client) or his authorized PoA holder, as per the Regulations of 2018 and upon receipt of intimation from a Participant, the Depository is statutorily bound to register the transfer. Thus, function of a Depository is merely administrative i.e. confined to record keeping and verification of authorization, is the submission of Mr.Kadam and he would submit that keeping in mind this role the Depository is entitled to charge nominal transfer fee and account charges.

As against this, he would submit that the Stock Exchange is exclusively empowered and conferred with jurisdiction to examine whether the transfer by brokers under the PoA was for margin requirements and for a proper use.

For this purpose, he would place reliance upon the circular dated 26/09/2016, which the SEBI has issued with a view of enhanced supervision of Stock Brokers/Depository Participants and this circular with the prevailing regulatory regime reiterated instructions to the Stock Broker, who was restrained from using client's funds and securities for proprietary purpose including settlement of proprietary obligations.

11 By inviting our attention to Clause 2.4.3, it is urged that the circular acknowledged that transfers of securities by a broker under a PoA from the client's account to the broker's pool account permitted transfer by the broker of the securities from the client's account for limited purpose, such as implementation of Government directions, rectification of erroneous transfers,

meeting legitimate dues and other similar purposes, but it was also indicated that for such transfer, the broker shall maintain a Stock Transfer Register clearly indicating day-wise details of the Securities transferred. This circular also obligated the Stock Broker to upload the client's fund balance and security balance on the stock exchange system for monitoring purposes.

Further, Mr. Kadam would also rely upon the circular issued by SEBI on 25/02/2020 to all recognized Stock Exchanges/Clearing Corporations and all Depositories with regard to the subject of 'Margin Obligations' to be given by way of pledge/re-pledge in the Depository System and he would submit that the Brokers were permitted to transfer shares of beneficial owners in CM/TM account for margin requirements, but by the said circular the transfer of securities for collateral was made permissible only through the creation of margin pledge created in the Depository System.

In the whole Scheme of SEBI Act, 1992 as well as Depositories Act, 1996 and the SEBI Regulations of 2018 read with the SEBI circulars, it is canvassed before us by Mr. Kadam that though SEBI acknowledged Power of Attorneys were usually taken from clients, who wanted to avail internet-based trading services, in order to offer the same, a Stock Broker required necessary authorization for seamless trading, collection of margins as well as settlement of funds and securities and this PoA was to act in aid of the stock broker activities. It is also submitted by Mr. Kadam that the guidelines issued by SEBI in its Circular on 23/04/2010 were applicable to the Stock Brokers as

well as those who acted in dual capacity of Stock Broker and Depository Participant and when shares were erroneously received and/or defaulted by a person acting in dual capacity, his role as Stock Broker is attracted and the onus is cast on him as 'Broker' to return the shares and he is bound by guideline No.8 of the said circular.

According to Mr.Kadam, SEBI, the Regulator itself had exonerated the Petitioner, and he would place reliance upon the order dated 24/07/2023 to that effect and would submit that SEBI recognized that the Depository has no control over securities, balances etc. that would enable it to inquire into why a transfer was being sought and with the specific observations to the effect that the Noticee i.e. CDSL was under obligation to process the request for creation of pledge within 15 days of the application, it had very limited scope with respect to determining legality of the hypothecation operation and in extending the scope to include analysis of debit balance of clients, whose shares have been pledged seems to be misplaced. In conclusion, the order noted that Noticee i.e. CDSL by allowing creation of pledge by BRH from Demat Account of its clients has not violated the provisions of Regulation 79(5) or Regulation 79(3) of the Regulations of 2018.

12 Mr.Kadam has analysed before us the three phases of the transaction, the first phase being the transfer of securities from the clients account to BRH first CM/TM second account which involve use of the PoA. According to him, SMS alerts for the

transfers were forwarded to the client and she raised no objection. The stand of CDSL is very specific that there was no reason for it to look at the transfer with suspicion, since that is effected pursuant to PoA executed by Daksha Bhavsar, which was never revoked and had the depository being informed about demise of her husband on 07/06/2019, it would have been alerted.

Upon credit of the Securities in the first CM/TM account, BRH became the beneficial owner by principle of fungibility under Section 9 of the Depositories Act.

The second leg covered the transaction from BRH's first CM/TM account to BRH CM/TM second account, where the beneficial owner of the first CM/TM account transferred the shares to his own CM/TM account.

In the third leg, there was transaction from BRH second CM/TM account in form of a pledge to HDFC Bank and this act was initiated from BRH's account, as it had become the beneficial owner and according to Mr. Kadam, as per Regulation 79 of the DP Regulations, only the Depository was only to verify whether the beneficial owner has initiated the pledge and confirm the same with the pledgee i.e. the HDFC Bank and nothing more was required to be inquired into.

Therefore, as a Depository, according to Mr. Kadam, CDSL has discharged its role in the fullest, without any breach of any statutory/regulatory regime and in his view the root of the transaction emanate solely from the misuse of the PoA by BRH issued to it in its capacity as 'Broker', for facilitating trading and margin collection and by no stretch of imagination the liability

can be foisted upon the Depository (CDSL). It is his specific contention that PoA was not used to pledge the Securities with HDFC and it is only at the first tranche of transaction when the shares were transferred by BRH as a Broker into its own CM/TM account, the PoA was put to use and, thereafter, BRH became the beneficial owner entitled to deal with the shares in its account.

13 Criticizing the Award, Mr.Kadam has argued that the Arbitral Tribunal rightly held that BRH as broker appear to have misused the PoA to pledge shares for availing loan for itself from the Bank and this finding was rightly based upon the statutory regime under 2016 circular, as such transfers effected by the Broker in Clause 2.4.3, which was monitored by Stock Exchanges under clause 2.4.4. However, according to him, the Tribunal erroneously held that BRH has deeply failed to obtain pledge request from the client after pledging the client's securities under DP Regulations and CDSL Bye-laws. This finding, according to him suffers from perverse and patent illegality, as the Tribunal ignored the admitted vital fact that shares were not directly pledged from Daksha Bhavsar's account, but the transactional chain in three tranches clearly lead to an inference that there was no occasion to obtain her assent to the pledge, when the shares were not pledged from her account.

The first leg of transfer according to Mr.Kadam, was legally permissible prior to June 2020 since as per Clause 2.4.3 of 2016 Circular, being a transfer from beneficial account to the broker's pool account (TM/CM account) and the onus to ascertain

whether such transfer was in furtherance of actual broker requirement was on the stock exchange as per 2016 circular.

According to him, since shares were fungible in nature, once those were transferred to BRH account, it became the beneficial owner and the question of obtaining client's pledge did not arise thereafter and the finding of the Tribunal in that regard cannot be sustained, as Tribunal over-looked the admitted position that for the first leg notice was given to Daksha Bhavsar by SMS alert, to which she never objected and she never intimated the Depository about the death of her husband nor did she apply for rectification of the PoA. Both the material considerations were clearly ignored by the Tribunal, is what is strongly urged by Mr.Kadam.

Another finding of the Tribunal holding CDSL liable under Section 16 of the Depositories Act, 1996, despite its own finding to the effect that the pledge created by BRH was fraudulent, has also received extreme criticism from Mr.Kadam as he would submit that as a Depository, the Appellant handled lakhs of transactions per minute and if for every transaction, the Appellant is made answerable, it will be impossible for it to run the show. It is also his submission that a bare look of Section 16 of the Act would make it clear that the provision is confined only to 'negligence' and do not cover 'fraudulent transactions' as it cast a responsibility on the Depositories to indemnify loss in certain cases.

Mr.Kadam has vehemently asserted before us that in law there is a distinction between negligence/nonfeasance and

misfeasance and he would rely on the decision of the Apex Court in *Malay Kumar Ganguly vs. Dr.Sukumar Mukherjee & Ors.*¹, to urge that 'negligence' is breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affair, would do or doing something which a prudent and reasonable man would not do and in determining whether negligence exist, all the attending and surrounding circumstances will have to be taken into account, but it is quite distinct from a fraud and malfeasance which is at a higher degree of crime and when BRH, a Stock Broker had acted fraudulently and this is what the Tribunal held, such conduct cannot be indemnified under Section 16.

The finding of the Tribunal holding that CDSL was purportedly negligent in not supervising BRH's operations in accordance with the Depository Regulations and bye-laws according to Mr.Kadam is highly erroneous as according to him the monitoring agency in the Securities market is SEBI and if SEBI has given CDSL a clean chit and exonerated it, the finding of the Tribunal, is perverse, when it held that the Appellant was negligent in not supervising BRH's conduct qua obtaining concurrence before the pledge.

In addition, he would place into service a well settled principle that the liability of acts committed by an Agent beyond its authority are not attributable to the Principal and he would place reliance upon two decisions of the Apex Court; *State Orissa*

1 (2009)9 SCC 221

*vs. Union India Assurance Company Ltd.*² and *Britannia Industries Limited vs. Punjab National Bank & Ors.*³. According to him, the Authority conferred upon the Depository Participant as agent are specifically prescribed under the bye-laws in form of 'rights and obligations' of participants in relation to CDSL making it imperative to maintain separate accounts by every participant in the name of its beneficial owner and Securities of each beneficial owner to be segregated and not to be mixed up with the securities of others or with the participant's own securities.

Relying upon the aforesaid obligations, according to Mr. Kadam, the act of inter-mixing securities is beyond such an Agent's authority and particularly when it is specifically prohibited and, therefore, the principal would never be held liable, when such inter-mingling is a result of a fraud perpetrated by the Participant (BRH) in its capacity as Broker while misusing the PoA.

According to Mr. Kadam when the sectoral regulator viz SEBI has not found the activity of CDSL to be wrongful or unlawful, the finding of the Tribunal in pointing a finger at it and observing failure to monitor without specifying as to under what Rule or Regulation, CDSL was to exercise its monitoring role, the Award is seriously criticized by Mr. Kadam.

2(1997) 5 SCC 512

3 (2013) 10 SCC 642

14 Apart from this, Mr.Kadam would also point out to us the errors in the impugned Judgment of the learned Single Judge as the tranches in the transaction had rightly identified in the impugned Judgment, but he would submit that the Single judge has supplanted the Tribunal's reasoning to sustain its conclusions, holding that the Depository Participants role was attracted in absence of corresponding trades on exchange and this finding, according to him, is patently illegal in the background that the correct transaction of chain was fully acknowledged i.e. from Daksha Bhavsar's account to TM/CM account and thereafter pledged to HDFC Bank.

By relying upon the decision in *Mcdermott International Inc vs. Burn Standard Co. Ltd. & Ors.*⁴ and *M/s. Pearl Developers Pvt. Ltd. vs. M/s. Universal Land and Finance Co.*,⁵ he would submit that an Award must stand or fall on its own reasons and it is not open for the Court to correct the errors of law in exercise of the jurisdiction under Section 34. It is also his submission that the Single Judge proceeded on a fundamental misconception, that broker's role is only attracted where shares are transferred from client's account to broker's CM/TM account only against the corresponding trade exhibited on exchange, which is not correct, as shares would also to be transferred from the client's account to the broker, as a margin for facilitating future trades. Therefore, according to Mr. Kadam, a transfer need not be regulated through an executed trade, but it would equally be made in anticipation of future trade i.e. by way of margin, when

4 (2006) 11 SCC 181

5 2018 SCC OnLine Del 11722

shares of a Bank can be transferred to the broker for margin, which can be utilized for any future trade and then such a transfer is said to be made in the course of broker's activities. This transaction, according to him, is fortified under Clause 2.4.3 of 2016 Circular which provide that a transfer from client's account to the pool account, was transfer by a person acting as Broker and such transaction would be monitored for compliance by the Exchange under Clause 2.4.4.

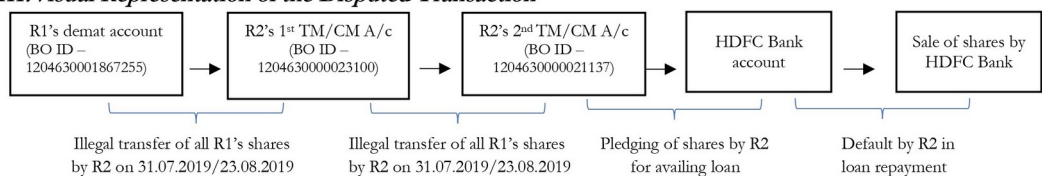
15 Mr.Kadam would also heavily rely upon the bye-laws of CDSL to submit that inter-mixing of Securities was beyond BRH's Authority, but the Single Judge failed to take note of the same and he would insist in noticing that the impugned Award as well as the impugned Judgment did not identify a single duty or responsibility allegedly breached by the Depository i.e. the Appellant and in its absence, no liability could have been fastened upon it.

The whole emphasis of Mr.Kadam in raising a challenge to the Award which, warranted an interference at the instance of the learned Single Judge is, that the view adopted has unsettled the very structure of the Securities Market, as the Depository CDSL has been held liable for functions of the Depository Participant, which in fact are carried out by it (BRH) in its capacity as a Broker and this would go a long way in the Securities market and result in adverse impact upon the functions to be discharged by the Depository like CDSL. It is his submission that in the event of any fraud being committed

through any transaction and considering that millions of transactions are effected every day, the Depositor would be bound to compensate the affected parties by virtue of the expanded and unlawful interpretation of Section 16 and give rise to consequences far reaching, since the Depositories charge nominal fee for effecting the transaction and the fund collected will be wholly insufficient to meet such obligations which effectively entail unlimited liability. This according to him would render the functioning of depository system unworkable and would frustrate the object of paperless trading envisaged by the Parliament, while it enacted the Depositories Act, 1996 to ensure seamless and paperless transactions.

16 The submissions of Mr. Kadam are strongly opposed by Mr. Karl Tamboly representing Respondent Daksha Bhavsar and though he would rely upon the list of dates placed before us by Mr. Kadam, he has projected before us the disputed transaction by channelizing it as below :-

III. Visual Representation of the Disputed Transaction



17 Mr. Tamboly, at the outset would focus upon the limited scope for interference by this Court in an Appeal under Section 37 of the Arbitration and Conciliation Act, 1996, and he would rely upon the latest decision of the Apex Court in case of *Ramesh*

Kumar Jain vs. Bharat Aluminium Company Ltd. (Balco)⁶ when the scope of Section 37 came to be reiterated in the backdrop of the terminology ‘patent illegality’ to conclude that it should create such a scenario, such as findings of the Arbitrator must show judicial conscience or that the Arbitrator take into account matters he should not have or he must have failed to take into account vital matters leading to an unjust result or the decision being so irrational that no fair or sensible person would have arrived at if given the same facts.

In addition, he would also invoke the well settled position in that regard as laid down in the earlier decisions of the Apex Court including the decision in case of ***Ssangyong Engineering and Construction Company Ltd. vs. National Highways Authority of India (NHAI)***⁷, and ***Consolidated Construction Ltd. vs. Software Technology Parks of India***⁸.

18 Mr. Tamboly has placed before us a Circular issued by SEBI on 17/12/2018 addressed to All Recognized Stock Exchanges/Clearing Corporations and the Depositories, on the subject of ‘Early Warning Mechanism’ to prevent diversion of client securities and according to him, this circular was issued in the back drop of instances where stock broker had diverted clients’ Securities received as collaterals towards margin obligations and/or settlement obligations for raising loan against shares on their own account and/or for meeting securities

⁶ 2025 SCC OnLine 2857

⁷ (2019) 15 SCC 131

⁸ (2025) 7 SCC 757

shortages in settlement obligations of its own account.

According to Mr. Tamboly, the circular outlined the early warning signals in relation to Securities pledge transactions by the stock broker to be identified by the Depositories and to be shared by the Stock Exchanges. Not only this, the said circular also contemplated constant monitoring by CDSL from the alerts generated from the monthly /weekly submissions made by the Stock Broker under the risk based supervision (RBS) or enhanced supervision to the Stock Exchanges.

The most important facet of the said circular according to Mr.Tamboly is the direction for the Stock Exchange and Depositories to frame internal policy guidelines regarding non co-operation by Stock Brokers and Depository Participants during inspections and according to him there is abject failure on part of Mr.Kadam's client in not framing the guidelines even till date.

By relying upon Clause 8.2 of the said Circular, he would submit that the Depositories were entitled to take the following actions :

“8.2 Actions to be taken by the Depositories :

- a) Restriction on further pledge of client securities from the client's account by freezing the stock broker client account for debit.
- b) Imposition of 100% concurrent audit on the depository participant.
- c) Cessation / restriction on uses of Power of Attorney (POA) given to stock broker by clients mapped to such brokers only to meet settlement obligation of that client. Clients to issue instructions electronically or through Delivery Instruction Slip (DIS) for delivery of shares for off market transfers.”

.. These guidelines having come into effect from 01/02/2019, according to Mr.Tamboly, if this circular was scrupulously

followed and guidelines would have been framed, the hard earned money of his client could have been saved. Having framed these guidelines, if still the transaction would not have been noticed, then according to Mr. Tamboly the Depository definitely could not have been attributed any negligence. He is conscious of the fact that there was no guarantee that even if such instructions were issued by Depository in form of guidelines, every misfeasance would have been avoided, but it is his specific contention that the Depository acted in a negligent manner, in not taking any steps in following the directives issued by SEBI in detecting early warning signals and in not adopting mechanism specified therein which has resulted into loss to his client.

19 As far as the argument about Agent-Principal relationship between CDSL and BRH is concerned, Mr. Tamboly would submit that the Appellant is a market infrastructure institution and not a passive intermediary as its functions are by statutory designs supervisory and compliance driven and its obligations to investors flow directly from that status. According to him, a Depository cannot ignore the discharging of the supervisory responsibilities that defined it and re-characterize its statutory duties as merely mechanical or administrative, in an attempt to shirk its statutory obligations and evade the liability under Section 16 of the DP Act. According to him, the DP Regulations has set out the core function of the Depository and this includes critical operations like holding, transfer of securities, record keeping, cyber security and cyber resilience framework

alongwith the regulatory compliance like surveillance, investigation, inspection, investor protection and services etc.

According to Mr. Tamboly the Depositories Act read with the DP regulations framed thereunder, cast a substantive and continuing duty on the Depository CDSL to protect investors /beneficial owners interest and to supervise the activity of its Depository Participant and according to him, it is a statutory mandate and not a discretionary function to be discharged. When BRH has faulted or alleged to have faulted, as a Depository Participant, it was the duty of the Appellant, which is governed by the Code of Conduct and make it imperative for it to adopt a pro active approach in protecting the investors, monitoring the Rules and Regulations at the end of the Participants and implement the Risk Management Framework and adopt appropriate due diligence measures.

On failure to do so and in particular, implementing the Circular of SEBI issued on 01/02/2019, to put 'early warning mechanism' in place to prevent diversion of client securities, the Appellant has failed in discharge of its duties and for this purpose, according to Mr. Tamboly its negligent approach is noted by the Tribunal and also the learned Single Judge.

By relying upon the decision in *SEBI vs. Rajkumar Nagpal & Ors.*⁹ he would submit that SEBI circulars issued in exercise of the powers have the force of law and form an integral part of the regulatory framework governing market participants and he admit that this circular was not brought to the notice of the

9 (2023)8 SCC 274

Tribunal , but was placed before the Single Judge while hearing Section 34 Petition. But in any case, according to him, the contention of Mr. Kadam that there is no provision in the Depositories Act or the Regulations conferring a positive supervisory role over CDSL may not be the correct position.

In the conclusion, according to Mr. Tamboly the concurrent findings of the Arbitral Tribunal and that of Section 34, Court do not warrant any interference as both the Authorities on due consideration of the entire statutory and regulatory framework has held the Appellant liable under Section 16 of the Depositories Act and the plea of no specific breach being identified cannot be accepted. In addition, it is submitted by Mr. Tamboly that the Section 34 Court did not supply the reasoning of the Tribunal, but tested the Award on permissible touchstones and found it plausible and grounded in law and not equity and refused to interfere with its finding and conclusion by applying the settled principal that the scope of interference under Section 34 is narrow and it is not permissible to re-appreciate facts/evidence, law or substitute the view merely because another view is possible.

20 The argument of the learned Advocate Mr. Kadam apprehending, destabilization of the financial system is also misconceived, as according to him, the volume of the transactions which is placed into service (purportedly 1,08,141 per minute) necessitate the automated surveillance, reconciliation, inspection and audit and that is the specific reason

why the SEBI has issued the Circulars from time to time.

According to him, if the Depositories are permitted to disclaim the fraudulent activity of their own Depository Participants, who act as its Agent and are bound by its own bye-laws and have to operate within a regulatory architecture of their own design, then the investors who place trust in such Depository, which is expected to play a pro active role in keeping the check on the purported transactions or else an investor would be stripped of his life saving with no meaningful recourse. It is therefore asseverated by the Mr.Tamboly that the appellant cannot run away of its responsibility when BRH has altered and caused loss to the respondent no.2.

21 The counter submissions advanced before us need to be appreciated in the backdrop of prevailing statutory regime which include the SEBI Act, 1992, which provide for establishment of a Board to protect the interest of investors in Securities and to promote the development of and regulate the Securities market in India.

The Board constituted under Section 3 of the Act is cast with a duty to protect the interest of investors in securities by adopting such measure as it thinks fit and this includes the following measures :-

- (a) specify, by regulations—
 - (i) the matters relating to issue of capital, transfer of securities and other matters incidental thereto; and
 - (ii) the manner in which such matters shall be disclosed by the companies;
- (b) by general or special orders—
 - (i) prohibit any company from issuing prospectus, any offer document,

or advertisement soliciting money from the public for the issue of securities;

(ii) specify the conditions subject to which the prospectus, such offer document or advertisement, if not prohibited, may be issued.

(2) Without prejudice to the provisions of section 21 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Board may specify the requirements for listing and transfer of securities and other matters incidental thereto.]

In addition, it is also empowered to issue directions if the Board is satisfied that it is necessary --

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interests of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person, it may issue such directions,—

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.]

22 Under Section 12 (1-A) no Depository Participant, custodian of securities or any other intermediaries associated with Securities market shall buy or sell or deal in Securities except under and in accordance with conditions on Certificate of Registration obtained from the Board in accordance with the Regulations made under the Act.

It is open for the Board in exercise of the powers conferred or in the performance of its functions under the Act to be bound by such directions on the question of policy as the Central Government may give it in writing. Similarly, the Board, by virtue of Section 30 is empowered to make Regulations

consistent with the Act and the Rules thereunder to carry out the purpose of the Act.

23 The regime of Securities is also governed by the Depositories Act, 1996 which is a statute to provide for regulation of Deposit in Securities and the matter is connected therein.

The Depositories Act has the participation of beneficial owner that is a person whose name is recorded with a Depository.

A Depository is a company formed and registered under the Companies Act and which has secured a Certificate of Registration under Sub Section 1-A of Section 12 of the SEBI Act, 1992. 'Participant' as per Section 2(g) means a person registered under sub-Section 1A of Section 12 of SEBI ACT 1992 and registered owner is a, Depository whose name is entered as such in the Register of the Issuer.

The Depositories Act contemplate an agreement between the 'Depository' and one or more 'Participant' (broker) as its agent and any person, though a participant may enter into an agreement with any Depository for availing the Services in such forms as specified by the Bye-laws. A 'Depository', on receipt of the information shall enter the name of a person in its record as the 'beneficial owner'.

The duties of the 'Depository' are set out in Section 7 of the Act which include registration of transfer of security on receipt of information from a participant in the name of the transferee.

Every person subscribing to securities offered by an Issuer have an option either to receive Security Certificate or to hold Securities with the Depository and where a person opts to hold a Security with a Depository, the Issuer shall intimate such Depository the details of allotment of such Deposit and on receipt of such information the Depository shall enter in its record the name of the allottee as the beneficial owner.

In the new regime of the Depositories Act, securities held by the Depository exist in form of fungible form, and are dematerialized.

Section 10 recognize the right of Depositories by providing that a Depository shall be deemed to be registered owner for the purpose of effecting transfer of ownership of securities on behalf of a beneficial owner and the beneficial owner is entitled to all rights and benefits and is subjected to all liabilities in respect of the Securities held by a Depository.

Subject to the Regulations and Bye-laws made in this behalf a beneficial owner, with the previous approval of the Depository, is empowered to create a pledge or hypothecation in respect of the Security owned by him through a Depository, but subsection(2) of Section 12 contemplate that every beneficial owner shall give intimation of such pledge or hypothecation to the Depository and the Depository shall make entries in its record accordingly, which shall be the evidence of a pledge or hypothecation. Similarly, the rights and obligations of the Depositories are set out to be as specified in the Regulations and the Statute is supported by the SEBI Regulations 2018 (DP

Regulations).

The said Regulations distinctly set out the framework of the Depository and govern the registration of Depository by grant of Certificate of Registration of the Board in form B of Schedule subject to the necessary compliances. One of the requirement being that the Depository shall comply with the provisions of the Act, Depositories Act, the bye-laws, Agreements and 2018 Regulations.

24. The Regulations, 2018 provide for governance of Depository by the governing board as set out in Chapter V with the prescription of the Code of Conduct as well as segregation of the functions. Chapter VI provide for grant of Certificate of Registration to a Participant through a Depository in which it proposes to act as a Participant and the Depository Participant under Section 35 entitled for registration may be a Public Financial Institution, a Bank, State Financial Corporation, a Clearing Corporation or Clearing House of Stock Exchange or a Stock Broker granting Certificate of Registration by the Board under Sub-Section (1) of Section 12 of the Act, as well as a non banking finance company having net worth of not less than 50 Lakhs etc.

The rights and obligations of the Depository, Participants, Issuers etc. including the manner of surrender of Certificate and creation of pledge or hypothecation is also specifically provided in the Regulation with the prohibition of assignment imposed on the Depository from assigning or delegating to any other person

its functions as Depository without prior approval of the Board. It is also mandatory for every participant to enter into an Agreement with the beneficial owner before acting as participant as per the bye-laws No.5.3.23, of the Depository. One important stipulation in the Regulation is maintaining of separate accounts and we deem it appropriate to reproduce Regulation 59 and 60, which reads thus :

Separate accounts

“59. (1) Separate accounts shall be opened by every participant in the name of each of the beneficial owners and the securities of each beneficial owner shall be segregated, and shall not be mixed up with the securities of other beneficial owners or with the participant’s own securities

(2) A participant shall register the transfer of securities to or from a beneficial owner’s account only on receipt of instructions from the beneficial owner and thereafter confirm the same to the beneficial owner in a manner as specified by the depository in its bye-laws.

(3) Every entry in the beneficial owner’s account shall be supported by electronic instructions or any other mode of instruction received from the beneficial owner in accordance with the agreement with the beneficial owner.

Statement of accounts

60. Every participant shall provide statements of account to the beneficial owner in such form and in such manner and at such time as provided in the agreement with the beneficial owner.”

There is also specific provision in form of Regulation 79 prescribing the manner of creating pledge or hypothecation and it allow a beneficial owner to create a pledge or security owned by him by making an application to the Depository through the participant, who has his account in respect of Securities.

The procedure to be followed is specifically set out in Section 79 and we will refer to the same while we deal with the actual process that has been followed.

25 In order to give effect to the whole statutory regime, SEBI has issued various circulars from time to time chartering the course of action to be followed by the Depositories/Depository Participants and though we will refer to the said circulars when the occasion arises, at this juncture we must only note that the circular issued by SEBI has a statutory force and binds the players in the field.

Under the aforesaid regime, a Depository is an entity that hold securities in an electronic or dematerialized form and facilitates their smooth transfer between the buyers and sellers and the Appellant is a depository registered under Section 12(1) of the SEBI Act, 1992. In terms of Section 4 of the Depositories Act, the Depository has to enter into an Agreement with Depository Participant to act as their agent and BRH before us is one of the Agent of CDSL.

The DP Regulations has set out the code functions of the Depository and this includes the key function of holding, transfer of securities, record keeping and to regulate as a regulatory compliance. It is involved in risk management, surveillance, investigation, inspection, investor protection services and also providing a redressal mechanism. In terms of the Depositories Act alongwith the Regulations, the depository plays a substantive role in protecting the interest of the investors/ beneficial owners

and supervising the activities of its participants. CDSL as a depository has framed its own by-laws and Mr.Kadam has tendered a copy of the same.

26 CDSL Bye-laws has defined market trades concluded through market trades and off market trades. CDSL indulges in trades concluded through the trading system of recognized stock exchange and clear and settle through clearing corporation which has entered into an Agreement with CDSL and this include trades which are negotiated privately and reported for clearing and settlement through clearing corporation.

It also engages off market trades i.e. trades that are not cleared or settled through the clearing corporation which entered into an Agreement with CDSL in terms of the bye-laws. The transaction before us is an off market trade as it is not through the platform of NSE or BSE.

CDSL bye-laws has set out its functionaries and process of admission of its participants. It also set out rights and obligations of participants qua CDSL and bye-law No.5 specifically provide that no participant shall conduct any business as participant unless it has entered into an Agreement with CDSL. Section 3.4 of the bye-laws require participant to maintain a separate account in the name of each of its beneficial owner and segregation of the securities, so that they are not mixed up with the securities of others.

As per bye-law No.5.3.22 every participant shall indemnify and keep indemnifying CDSL against any loss, damage caused to it by reason of any mistake, error, misfeasance, willful

misconduct, mis representation, fraud, forgery etc. by its officers, employees, servants or agents, who fail to meet any of the obligations or liabilities to CDSL. In case of any loss, CDSL is also duty bound to indemnify the loss incurred by such beneficial owner and where such loss due to negligence of participant is indemnified by CDSL as provided in Section 16(1) of the Act, the CDSL has a right to recover the same from such participant.

27 In this statutory background if we look at the transaction involved, it is evident that Daksha Bhavsar and her late husband executed a PoA in favour of the Stock Broker BRH and as per SEBI Guidelines it was permissible for the Stock Broker to transfer the Securities to its Corporate Clearing Member/ Trading Member client account and this transfer can be for sale, margin or collateral security.

In the second tranche, the Depository Participant/stock broker BRH transferred the equity shares which came into its TM/CM account to its Corporate Clearing Member/Trading Member client account. This transfer was carried out based on the authority granted under the PoA and by virtue of the transfer, the securities stood transferred in the account of BRH, who became its beneficial owner. Once the Securities/Shares came into the account of TM/CM of BRH, they lost their identity, the shares being fungible in nature and it became the holder of such Securities, the transaction being an off market transaction.

28 It is the case of Mr. Kadam that for this transfer an alert was created and Daksha Bhavssar was aware of such transaction, but it is the specific case of Mr. Tamboly that though the De-mat account was opened by Daksha Bhavsar with BRH on 18/06/2018, it being a stock broker and also Depository Participant, she was always a passive, long term investor with no trades/pledges and no market obligations before the disputed transaction.

It is the case of Mr. Tamboly that after a period of one year i.e. on 31/07/2019 and 23/08/2019 without any specific instructions from Daksha Bhavsar, BRH by misusing the PoA issued in its favour, illegally transferred the shares valued at Rs.98,07,884.60 from her De-mat Account into its own TM/CM Account. Mr. Tamboly has specifically urged that the PoA was never placed on record.

The further transaction according to Mr. Tamboly is equally illegal when BRH pledged the shares of Daksha Bhavsar alongwith those of other clients with HDFC Bank as a security for a loan availed by itself and when there was a default, HDFC invoked the pledge resulting into sale of the securities and investors shares in the market.

29 In the wake of the aforesaid transaction, Respondent No.1 Daksha Bhavsar alleged that BRH had illegally transferred and pledged her shares by misusing the PoA and caused loss to her and the claim was also staked against the Depository, as the Depository Participant was acting as an Agent of the Depository i.e. CDSL and, therefore, liable under Section 16 of the

Depositories Act, as it was alleged that she lost her amount as it was negligent in supervising its Participant.

The claim was opposed primarily on the ground that it was based on the misconstrued role of the Depository and the accusations levelled against BRH were in its capacity independently, as a Stock Broker and not a Depository Participant. One more aspect which was placed into service was absence of negligence, and it being demonstrated that the Depository had failed to discharge its statutory obligations.

The Tribunal by its Award of 30/01/2024, taking recourse to the provision of Section 16 of the Depositories Act, held the Depository, CDSL, liable to indemnify the claimant for breaches committed by BRH, its Depository Participant and awarded Rs.86,02,768/- alongwith post-award interest at 9%.

The Tribunal analysed the role of the Appellant CDSL and BRH and concluded that BRH misused the PoA to pledge the shares for personal loans rather than margin requirement and failed to obtain the required pledge request as a Depository Participant. In the light of the statutory framework including the Depositories Act, as well as Regulation of 2018 along with the bye-laws of CDSL, it was concluded that there was abject failure of governance and inadequate monitoring/supervision was the primary cause for loss to Daksha Bhavsar and in specific it is observed that with its participant misusing the PoA, as a principal, CDSL cannot remain 'blissfully oblivious', particularly when BRH illegally pledged the Securities of 9,493 clients without their consent and, therefore, was liable under Section 16

of the Depositories Act, to indemnify the investors for the loss caused by the participant.

In the entire litigation, the stand of CDSL presented before us through Mr. Kadam is, that neither before the Tribunal or before the learned Single Judge, any specific violation is attributed to the Appellant as a Depository and a plea is adopted that lakhs of transactions take place on its platform per minute and, therefore, it is impossible for it to supervise every transaction and in fact on 31/07/2019 and 23/08/2019 when BRH transferred the Securities to its own TM/CM account SMS alert was created for the first leg of transaction on her mobile number and, therefore, Respondent No.1 was aware that the Securities have been transferred out of her joint De-mat Account and Mr.Kadam has vehemently urged that once the amount came into the TM/CM account of BRH, it became the beneficial owner entitled to transact, which did not require any authority from the original account holder and in such situation the Depository had no role to play.

30 The Depository, under the Depositories Act is entitled to enter into an Agreement with one or more participants as its Agent and any person, though a participant may enter into an Agreement with any Depository for availing its services. By virtue of Section 7 it is the responsibility of Depository, on receipt of intimation from a Participant, register the transfer of security in the name of transferee and the option is given to the

person subscribing securities to either receive the security certificates or he can decide to hold securities with a Depository and when a person opts to hold a security with Depository, the issuer shall intimate the Depository about the details of allotment of the security and on receipt of such information the Depository shall enter in its record the name of the allottee as the beneficial owner.

As the Securities are held by the beneficiary in dematerialized form, by virtue of Section 10 of the Depositories Act, a Depository is deemed to be a registered owner of the securities for the purposes of effecting transfer on behalf of beneficial owner. It is imperative for the Depository to maintain a Register and an index of beneficial owners and thus he acts as a record keeper.

The indirect involvement of the Depository is evident from Section 12 of the Depositories Act when a beneficial owner is authorized to create a pledge or hypothecation in respect of a security owned by him with the previous approval of the Depository and Sub-section (2) of Section 12 mandate it for every beneficial owner to give an intimation of such pledge or hypothecation to the Depository and such Depository shall make entries in its record accordingly. Therefore, though Mr. Kadam has urged that once BRH became the beneficial owner and created hypothecation, that was a transaction which was outside the purview of the Appellant as a Depository, we find that even if BRH had become the beneficial owner, if it had hypothecated the Depository, it ought to have given intimation of such pledge to

the Depository and an entry in that regard ought to have been made. It is also the obligation cast on the Depository under Section 13 to furnish to the Issuer information about the transfer of the Securities in the name of the beneficial owners at such intervals and such manner as may be specified in the bye-laws and it will be the duty of the Issuer to make available to the Depository the copies of the relevant records in respect of the Securities held by such Depository.

From reading of the aforesaid two provisions, it is evidently clear that the Depository plays an important role in the Securities market and the regulatory frame work in existence has determined its role and its relationship with its participants like BRH. Section 16 of the Depositories Act, which is the fulcrum of the Judgment of the Tribunal and also of the learned Single Judge, making the depository liable to indemnify the loss, reads to the following effect :-

Depositories to indemnify loss in certain cases

16(1) Without prejudice to the provisions of any other law for the time being in force, any loss caused to the beneficial owner due to the negligence of the depository or the participant, the depository shall indemnify such beneficial owner.

(2) Where the loss due to the negligence of the participant under subsection (1) is indemnified by the depository, the depository shall have the right to recover the same from such participant.

31 We do not agree with the submission of Mr. Kadam that there is no statutory responsibility cast upon the Depository, but perusal of Section 26 of the Depositories Act, would dispel the said contention as the Depository, with the previous approval of SEBI is entitled to make Bye-laws consistent with the provisions

of the Act, and Regulations and in particular such by-laws provide for :-

“Power of depositories to make bye-laws.

26(1) A depository shall, with the previous approval of the Board, make bye-laws consistent with the provisions of this Act and the regulations.

.....

(g) the procedure for ensuring safeguards to protect the interests of participants and beneficial owners;

(o) the procedure for proceeding against the participant committing breach of the regulations and provisions for suspension and expulsion of participants from the depository and cancellation of agreements entered with the depository;

(p) the internal control standards including procedure for auditing, reviewing and monitoring.”

What is also relevant to note is sub-section (3) and sub-section 4 of Section 26 which is clearly indicative of the fact that the Depository is entitled to make bye-laws as it is cast with the responsibility of safeguarding and protecting the interest of participants and the beneficial owners.

32 In exercise of this power, CDSL has formulated the bye-laws in tune with its role under the Depositories Act, which has received approval of SEBI as contemplated under Section 26(1) of the Depositories Act. The bye-laws itself is indicative of the supervisory role to be discharged by the Depository as it provides for constitution of committees like Functional Committee, Grievance Redressal Committee, Oversight Committee, Advisory Committee with composition of its members. The Advisory Committee is an Oversight Committee of CDSL and comprised of public interest directors and Depository Participants of CDSL and it exercise the power prescribed under the Regulations of 2018 and other applicable Regulations and is empowered to

advise the Depository on non regulatory and operational matters including technology, charges and levies amongst others. There is also a Regulatory Oversight Committee which comprises of independent external persons which has powers prescribed under the Regulations of 2018 and is also empowered to monitor the dealings in the Securities of the key management personnel and also consider and decide the criteria for admission and withdrawal of Securities and continuous compliance requirements.

Clause 4.1 authorises CDSL to issue operating instructions, specifications and guidelines relating to its functioning and operation of CDSL and also that of its Participants, Issuers, Clearing Corporations and Clearing Members, both *interse* and in relation to CDSL. CDSL is empowered to repeal , delete, amend and /or alter the operating instructions by keeping SEBI in the loophole.

The operating instructions may cover the mode and operation in the depository system of CDSL as well as determination from time to time of the fees, system usage charges, deposits, margins, penalties and other monies payable to CDSL by the Participants, Issuers, Clearing Members and Clearing Corporations. The operating instructions shall also cover the detail procedure for dematerialization and rematerialization of Securities and also reconciliation of records between CDSL and Participants, Issuers, RTAs and Clearing Corporations. The operating instructions issued by CDSL shall govern the administration, maintenance and investment of all

fund(s) settled by CDSL including the corpus, accretions and contributions to the fund.

33 In the bye-laws of CDSL, the admission of Participants and ground of Registration Certificate is one of the most important function of CDSL as a Depository.

Every participant who is admitted in CDSL is required to pay such amount by way of admission fees, annual fees and other fees for the due performance of the duties and obligations and CDSL is entitled to call upon the Participant to make such contribution towards fund and to pay such fees, deposits and additional security deposit or to furnish any additional guarantee or required the deposit of any money in respect of contribution to the funds for protection of interest of the beneficial owners.

The bye-laws has also formulated rights and obligations of participants in relation to its dealing with CDSL and a participant while conducting any business as a participant with a beneficial owner., act as an Agent of the CDSL. There are instructions given to the participants in clause 5 of the Bye-laws which are in consonance with the SEBI Regulations, requiring maintenance of separate accounts in the name of each of its beneficial owner and avoiding mixing up of securities.

It is the duty of the participant to indemnify and keep indemnified the CDSL and its Officers, employees or agents, from any act committed or omitted , which is inconsistent with or in breach of the existing regime or if any loss is suffered on account of an overt act in form of mistake, error, misfeasance etc. As a

part of the bye-laws, it is permissible for the CDSL to recover from the participant, such amount as CDSL may deem fit and appropriate in case if it suffers or incur any harm, loss, damage, injury on account of any act, deed, or matter or thing done, committed or omitted by acting in default or breach of the Act, Regulations, bye-laws, agreements and operating instructions issued by CDSL. In case of any loss caused to the beneficial owner due to negligence of any participant, CDSL which is duty bound to indemnify the loss under Section 16(1) of the Act, CDSL has right to recover the same from the participant.

.. In addition to the aforesaid regime, we find that SEBI has also issued circulars from time to time and the subject of the Circular dated 26/09/2016, is specifically with regard to the enhanced supervision of Stock Brokers/Depository Participants and the said Circular mandated the depositories to draw attention of the Stock Brokers/Depository Participants to give guidelines framed by the Committee constituted by SEBI, which were issued with a view to enhance the supervision over the Depository Participants and Stock Brokers and these guidelines cover various instructions.

Clause 2.4 clearly contemplate that the Stock Broker shall not use the client's funds and securities for the proprietary purposes including settlement of its obligations and what BRH has done is clearly contrary to this direction. Transfer of funds between the account of the Stock Broker and client account and the Stock Broker and the settlement account and the client's own bank is permitted only for legitimate purpose such as recovery of

brokerage, statutory dues etc. Similarly transfer of Securities between the stock broker and the client's account and individual clients BO account to pool account, is permitted only for legitimate purpose like implementation of Government/Regulatory directions or orders and the stock exchange is empowered to monitor the compliance during inspection.

The detail guidelines issued by SEBI include the conduct of internal audit and monitoring of quality of internal audit reports and though these guidelines has cast the duty of monitoring the financial indicators on the stock exchanges, the standard operating procedure for Stock Brokers/Depository Participants prescribed also require the depositories to monitor their Members/Depository Participants and they are empowered to frame various event based monitory criteria based on market dynamics and market intelligence. Clause 6 of the said Circular has set out the monitoring criteria for Stock Brokers and the monitoring criteria for Depository Participants, obviously to be supervised by the Depository. The Stock Exchange and Depository as per the said circular are empowered to jointly initiate uniform penal action on Stock Brokers and Depository Participants respectively in the event of non compliance with the criteria set out therein with a liberty conferred on the Stock Exchanges and Depositories to frame more stringent criteria.

The reading of the whole guidelines annexed to the said circular has an active involvement of the Depository i.e. CDSL and it will be incorrect to say that the entire supervising/ monitoring function is that of Stock Exchange, as we find that for

transactions taking place on the platform of Stock Exchanges, it is the Stock Exchange which shall monitor the activities of the Stock Broker, but for Depository Participants the monitoring is through the Depository and, therefore, in our view the Appellant, CDSL cannot run away from its responsibility.

34 Mr. Tamboly has also placed before us the copy of another Circular of SEBI dated 17/12/2018, on the subject of early warning mechanism to prevent diversion of clients Securities and this circular is prefaced in the background set out as below :

“There have been instances where stock brokers had diverted clients’ securities received as collaterals towards margin obligations and/or settlement obligations, for raising loan against shares on their own account and/or for meeting securities shortages in settlement obligations on its own account. However, such instances of diversion of securities come to light when stock broker failed in meeting the margin and/or settlement obligations to Stock Exchange/Clearing Corporation. 2 It has been decided to put in place an Early Warning Mechanism and sharing of information between Stock Exchanges, Depositories and Clearing Corporations to detect the diversion of client’s securities by the stock broker at an early stage so as to take appropriate preventive measures. The threshold for such early warning signals shall be decided by the Stock Exchanges, Depositories and Clearing Corporations with mutual consultation.”

The said circular identified the early warning signals on deterioration of the financial health of the Stock Broker/ Depository Participant on account of sudden activation of significant number of dormant client’s accounts and/or significant activity in such accounts.

As per the said circular, early warning signals in relation to securities pledge transaction by the Stock Broker has to be identified by the Depository and shall be shared with the Stock

Exchanges which would include movement of shares to/from a large number of clients' Demat Account or large value shares to Stock Broker's Proprietary Account and vice a versa or transfer of large value of shares through off-market transfers other than for settlement purposes and invocation of pledge of Securities by lenders against Stock Broker or his clients.

These are the precise signs which the Appellant missed to take note of as the account of Respondent No.1 was dormant for a period of one year, but all of a sudden it resulted in the movement of the Securities to the account of the Stock Broker and subsequently these securities were pledged with HDFC Bank towards discharge of BRH's own liability, which was followed by invocation of the pledge, but the Depository, CDSL, did not identify these warning signals.

In the background of the increase in number of investors complaints against the Stock Broker/Depository Participant alleging unauthorized trading/unauthorized delivery instruction being processed, and non receipt of funds and securities, it was directed that CDSL should monitor monthly/weekly submissions by the Stock Broker and this would relate to pledging of Securities in case of client having credit balance and use of the funds by the Stock Broker for its own purpose or funding debit balance of clients.

It is to avoid such situation with the early warning signals being mapped, the Stock Exchanges and Depositories were directed to frame an internal policy/guidelines regarding non-cooperation by the Stock Broker and Depository Participants and

was empowered to lay down the time period, types of documents critical for closing the inspection and if there is no compliance it to be treated as non-cooperation. The directives of SEBI having statutory force, it made imperative for the Appellant to frame such guidelines in the wake of the circular of 17/12/2018, but we are informed that no such guidelines are in place and had these guidelines being issued and the activities of the Depository participant would have been mapped, probably the situation created by BRH could have been arrested.

Clause 8.2 provided for the action to be taken by the Depositories in the following manner :

“8.2 Actions to be taken by the Depositories :

- a) Restriction on further pledge of client securities from the client's account by freezing the stock broker client account for debit.
- b) Imposition of 100% concurrent audit on the depository participant.
- c) Cessation / restriction on uses of Power of Attorney (POA) given to stock broker by clients mapped to such brokers only to meet settlement obligation of that client. Clients to issue instructions electronically or through Delivery Instruction Slip (DIS) for delivery of shares for off market transfers.”

SEBI clearly directed the Stock Exchanges/Clearing Corporations and Depositories to implement the early warning mechanism and preventive actions with effect from 01/02/2019 , but no steps are taken by CDSL in this regard.

It is on account of non adherence to the said guidelines, issued by SEBI, which has the statutory force, Mr. Tamboly has attributed negligence in not performing the duties which are cast upon the Depository/Stock Exchanges to frame guidelines.

35 Another circular of 20/06/2019 also provided guidance for handling of client securities by Trading Members/Clearing Members which involve segregation of the the securities of the client from that of the stock broker and the Securities Contract (Regulation) Act 1956 and SEBI (Stock Brokers) Regulations 1992 provided that the Stock Broker shall segregate the Securities or monies of the client and shall not use the same for self or any other client and this is precisely what BRH has indulged into.

The circular issued by SEBI cast a responsibility on Stock Exchanges, Clearing Corporations and Depositories to put in place a mechanism for monitoring as below:-

6. Monitoring with respect to handling of clients securities :
 - a) Handling of unpaid clients' securities by the TM/CM-Mechanism of matching of transfer of securities with the securities obligation as obtained from the clearing corporation with respect to the following :-
 - i. Securities transferred from the client unpaid securities account to the pool accountant
 - ii. Securities transferred from the client unpaid securities account to the concerned client account.
 - iii. Securities transferred from pool account to the concerned client account.
 - b) All the DP accounts tagged as "Stock Broker-Client Account' are wound up before August 31,2019.
 - c) Securities lying with TM/CM in client collateral account, client margin trading securities account and client unpaid securities account shall not be permitted to be pledged/ transferred to Banks/NBFCs for raising funds by TM/CM.

The provisions in the said circular were declared to come into effect from 01/09/2019 and non compliance of the same invited a penalty .

Though Mr. Kadam has urged that this circular came into effect after the subject transaction, we find that from time and

again SEBI cautioned the Stock Exchanges and the Depositories to maintain a vigil on the activities of the Stock Brokers and Participants, so as to safeguard the interest of the clients and to protect its securities and it is in this regard, the Depository CDSL face an accusation of negligence and it has been fastened with the liability under Section 16 of the Act. The Appellant has been held liable for being negligent in not keeping vigil over the activities of its Depository Participant, BRH and Section 16 of the Depositories Act is based on the principal that Depository Participant act as an agent of the Depository and, therefore, the liability is fastened on principal (CDSL) for the wrongful acts committed by its Agent (BRH) till the course of its engagement as Depository Participant. BRH acting as a Depository Participant in CDSL's depository system, was authorized to deal with the investor securities and misuse of PoA and consequent illegal transfers were possible only because there was no supervision by the principal. It is a well settled principle that if an Agent commit fraud for an act in the course of business, as he was authorized or held out as authorized to transact on account of its principal, the later may also be held liable.

The aforesaid principle is also reinforced in the wake of the provision of Section 238 of the Contract Act, 1871 which provide that a principal is liable for fraud or misrepresentation committed by its agent acting within the scope of its Authority.

The reliance placed by Mr. Kadam on *Britannia Industries Ltd.* (supra) and *State of Orissa* (supra) to prove that principal is not liable for the fraud committed by an Agent, when the Agent

is acting in excess of the authority, according to us, is misplaced. In fact, in the present case, we find that BRH acted within the purview of depository system and by virtue of its position as Depository Participant, with an Agreement entered with the Depository, it was acting within the framework of its authority conferred by the Depository. Here, the real test is whether the Agent was placed in a position enabling the fraud in the course of employment and in such case, principal remains liable.

The reliance in case of *Malay Kumar Ganguly* (supra) to draw distinction between misfeasance, malfeasance and nonfeasance do not take the case of the Appellant any further as such classifications is of no assistance, as non adherence to the clear statutory obligations and failure to discharge the regulatory duties, definitely give rise to a civil liability and this is what has been precisely held by the learned Arbitral Tribunal and the finding being upheld by the learned Single Judge.

Had CDSL put up a mechanism timely in place and implemented SEBI mandated safeguards, the disputed transaction would have been captured and it would not have been possible for BRH to transfer large volume of shares from dormant passive investor's account, one of which belong to Respondent No.1. Once it is not disputed that the SEBI circulars have the force of law and form an integral part of regulatory frame work governing Depository Participants which include the Appellant and Respondent No.2, and this position is not disputed by Mr.Kadam, a failure to frame such guidelines/formula, a chartered mechanism, to note some unwanted act of participant,

in our view itself amounts to being negligent and that is the specific reason why the Appellant has been caught in the web of Section 16, which contemplate negligence. As suggested by Mr.Kadam, the word 'negligence' in Section 16 is not limited to convey a trivial mistake like allotting a wrong number to the Securities or Depositories or miscalculation of the Securities resulting into loss to the beneficial owner and though we agree that the term 'negligence' used in Section 16(1) of the Depositories act, is not synonymous to a fraud, but when the legislature has consciously restricted its scope only to 'negligence', indicating lack of care or failure to act with the level of care that a reasonably careful person would use in the same situation, we attribute it to the appellant CDSL.

For establishing negligence, it is necessary to establish presence of four elements; duty of care; breach of duty; causation and damage.

Since CDSL had been cast with a responsibility of protecting the interest of the investors and their securities in the statutory regime, we find that it has failed to discharge the said duty and rather remained completely oblivious for the acts of its Depository participant (BRH). The careless action is the direct reason for Respondent No.1's loss alongwith other investors as BRH freely pledged the Securities of the client by transferring it into its own account, and definitely it could not have pledged the Securities of the clients for securing its own personal interest. There is also presence of all the four elements, as an injury being caused to Respondent No.1 as she lost the amount invested in

Securities as they being pledged with the HDFC Bank by BRH , the Bank on its default revoked the pledge.

36 We are conscious of the fact that Negligence do not necessarily cover fraud and it is distinct from fraud and we have no hesitancy in holding that the liability fastened upon the Appellant as a Depository is attributed to its negligence though we find that at some places in the Judgment, the learned Single Judge has also discussed the fraud, but ultimately the liability of indemnifying Respondent No.1 has shown to have arisen out of negligence attributed by BRH and for no other reason.

The finding of the Arbitral Tribunal as well as the learned Single Judge is based on the correct understanding of the Securities market as it is noted that BRH operated in dual capacity as Stock Broker and also Depository Participant (DP) and it executed a systematic illegality by misusing the PoAs to unauthorizedly transfer shares from 9,493 clients into its own Corporate Account without any underlying trades and pledged these securities for personal loans, ultimately causing loss of the investors holding since HDFC sold the shares upon BRH's default.

The learned Single Judge rightly ascertained the role of BRH not only as a Stock Broker, but also as a Participant by holding that the Securities were moved into the account of BRH from the Demat Account of the client by misusing the PoA without the pledge request and that is how BRH manipulated the depository system in its capacity as Depository Participant. The transfers by BRH includes TM/CM account composite

transaction which require the Depositories authorization and it was executed by BRH acting as an Agent of CDSL as per its own bye-laws, the finding of the Tribunal that transfer of securities/shares was a composite act involving BRH as a Depository Participant, was approved by the Single Judge.

That is the reason that under Section 16 of the Depositories Act, it is a concurrent finding rendered that the Appellant is directly and absolutely liable to indemnify the investor (Daksha Bhavsar) because of BRH's negligent acts committed in its capacity as Depository Participant, who act as an Agent of the Depository, and, therefore, any negligence on its part is legally considered as negligence of the Depository, as the principal making it liable to compensate the beneficial owner regardless whether the Depository had prior knowledge of the same. Since the broad scheme of the Act ensure quick and smooth compensation for the mal practices of the Depository Participant and the Scheme also permit the Depository to subsequently use its resources to recover the funds from the Depository Participant and this action is open for being pursued by the Appellant.

The liability under Section 16 of the Depositories Act to indemnify the beneficial owner is absolute, once a negligent act by Depository Participant is established and it is open for the Appellant as Depository to recover the said amount from the Participant as per its own bye-laws.

37 One important aspect which cannot escape our attention is the provision for settlement in the bye-laws of CDSL and as per the market trade settlement is concerned, CDSL is entitled to

debit and or credit the account of the beneficial owner and/or to such accounts as may be specified in the operative instructions for the Clearing Corporation/Settlement Procedure, strictly in accordance with the advise issued by Clearing Corporation on confirmation of payment. However, with reference to Clause 7.2 of the Bye-laws, in respect of off market trade, CDSL shall debit and/or credit the account of the beneficial owner entitled to such credit or debit, only after receipt of confirmation from the delivering beneficial owner and the receiving beneficial owner through their respective participants confirming details of such securities.

We find substance in the submission of Mr.Tamboly that CDSL could not have permitted the transfers unless it received confirmation from its client and this could not have been allowed on the basis of PoA apart from the fact that the terms of PoA are never produced before us.

Since the rights and obligations of the Depository qua the Participant are clearly set out by the bye-laws and the participant was under an obligation to maintain a separate account for each beneficial owner and ensure that the Securities of the beneficial owner are not mixed up with its own Securities, the supervision or monitoring by CDSL as Depository was very much mandatory.

38 Reliance placed upon the order passed by the Adjudicating Officer of SEBI in the matter of Karvy Stock Broking Limited ('KSBL') is perused by us, as pursuant to a Joint Inspection of KSDL conducted by SEBI along with NSE and BSE, the non-compliances were observed with respect to Pledging/misuse of

client securities by it.

The role of CDSL in the matter related to KSBL was ascertained and explanation was sought from CDSL in relation to the relevant clauses of SEBI circular of 2016 on enhanced supervision of stockbrokers Depository Participants as well as the compliance of circular dated 17/12/2018 on Early Warning Mechanism.

The detail order dated 25/11/2022, a conclusion is drawn that in respect of the complaints received in respect of KSBL - DP, the noticee had taken reasonable steps to address the complaint and the evidence was insufficient to establish that it had acted in casual manner and there is violation of Regulation 17 read with Regulation 98 of DP Regulations, 2018, as well as the Code of Conduct for depositories. However, it is worth to note that the said order is based upon the violations qua one of the Depository Participant i.e. KSBL and merely because the CDSL had adopted a cautious approach in that case, is no justification to infer that CDSL did not fault in the present case, where Daksha Bhavsar was deprived of her securities. Though the order noted that SOP was formulated which was also approved by SEBI, the moot question is why did it not trigger the Early Warning Alert in case of Daksha Bhavsar, when BRH misutilised its authority and pledged the shares with HDFC which were invoked by it when BRH failed to discharge its personal obligation.

What is expected of an authority like the depository in light

of its Bye-laws and the Regulation of 2018, is to have a keen control over the affairs of its Depository Participant, and on failure to do so, CDSL has been held liable under Section 16 of the Depositories Act.

Mr.Karl Tamboly has also tendered before us a compilation depicting compliance with SEBI circular dated 17/12/2018 (Early Warning Circular) and we find this to be made applicable in the matter of Karvy Stock Broking Limited, but CDSL definitely did not issue any directions as regards any other depository.

From the material placed before us, in a sealed envelope, we have before us minutes of the meeting held on 24/1/2019 with stock exchanges, clearing corporations, and depositories, with regards to the subject of formulation of the guidelines on 'Early Morning Mechanism' and the triggers suggested, but unfortunately we do not find the said decision to be translated in form of any action.

38 In the wake of the aforesaid, we do not find substance in the present Appeal and more particularly when in exercise of powers under Section 37 of the Arbitration & Conciliation Act, the scope for our interference is minimal and more circumscribed than the scope available in Section 34. It being a well settled position in law that the scope of intervention of the Court in arbitral matters is virtually prohibited although not absolutely barred and such interference is confined only to the extent contemplated under Section 34 of the Act. The Appellate power available under Section 37 of the Act is further limited

within the domain of Section 34 and it is exercisable only to find out if the Court, exercising the power under Section 34 of the Act has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. It is not permissible for the Appellate Court to consider the matter on merits so as to find out whether the decision of the Arbitral Tribunal is right or wrong and re-appreciate the evidence which is permissible to be appreciated as a Court of Appeal. It is only when the Court exercising the power under Section 34 has failed to exercise its jurisdiction vested in it or has travelled beyond its jurisdiction, it is open for the Appellate Court to step in and set aside the order passed under Section 34 of the Arbitration and Conciliation Act. But definitely the Arbitral Award is not liable to be interfered unless a case for interference is made out and it is not permissible to interfere in the Award or the order only on the ground that a better view is possible.

The Scope of Section 37 of the Act being more summary in nature, when we find that the Arbitral Award was based on evidence and is reasonable and the learned Single Judge has rightly exercised the power under Section 34 of the Act and examined the Award on the permissible grounds and recorded that it did not suffer from illegality or that any error was committed and therefore upheld the same, and therefore in exercise of our power under Section 2 it is not possible for us to show any interference. As a result, we dismiss the Appeal.

The material placed before us by Mr.Kadam which was retained by us in sealed envelope is directed to be returned to the learned Senior counsel.

(MANJUSHA DESHPANDE, J)

(BHARATI DANGRE, J)

On pronouncement of the judgment, Mr. Kadam seeks stay of the judgment, but since we have pronounced upon the merits of the Appeal, we refused to stay our judgment, as we have expressed our concurrence with the Award of the Arbitral Tribunal and the judgment of the learned Single Judge. However, on the insistence of Mr.Kadam, we refrain the respondent from taking any coercive steps for recovery of the amount due and payable to Daksha Bhavsar in terms of the award and the judgment of the learned Single Judge.

We therefore, grant stay limited to the effect that no coercive steps shall be taken for recovery of the amount from the appellant for a period of six weeks from today.

(MANJUSHA DESHPANDE, J)

(BHARATI DANGRE, J)